Senate Bill No. 795

CHAPTER 307

An act to amend Section 8778 of, and to add Section 8778.5 to, the Health and Safety Code, relating to cemeteries.

[Approved by Governor October 5, 2007. Filed with Secretary of State October 5, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

SB 795, Yee. Cemeteries: investment of special care trust funds.

Existing law, the Cemetery Act, which is administered by the Cemetery and Funeral Bureau, provides for the regulation of certain cemeteries, including any cemetery that establishes an endowment care fund or a special care trust fund. Under existing law, endowment care funds and special care trust funds are required to be invested and reinvested in specified types of investments. Existing law provides that any investment lawful for endowment care funds is a lawful investment for special care trusts created by irrevocable agreement.

This bill would instead provide that any investment that is lawful for endowment care funds is a lawful investment for any special care trust.

Existing regulations adopted by the bureau require a trust agreement between the board of trustees or cemetery authority and trustor to set forth what revocation expenses will be charged out of the income of the trust upon its revocation, as provided, and prohibits the amount charged for revocation expenses from exceeding 10% of the trust corpus.

The bill would require the board of trustees to honor a written request of revocation by the trustor within 30 days upon receipt of the written request, and would authorize a board of trustees to charge a revocation fee out of the earned income of a special care trust fund, provided that the amount charged does not exceed 10% of the trust corpus, subject to certain exceptions. The bill would also permit the board of trustees to charge an annual fee, not to exceed 4% of the trust balance, for administering a revocable special care trust fund, as provided. The bill would make a violation of these provisions punishable by disciplinary action as provided under existing provisions of law, or by a civil fine, or both, as determined by the Cemetery and Funeral Bureau.

The people of the State of California do enact as follows:

SECTION 1. Section 8778 of the Health and Safety Code is amended to read:

8778. The following shall be eligible investments for all special care trusts:

(a) Bonds of the United States or this state, or of any county, city, or city and county in this state.

(b) Bonds that are legal investments for commercial banks in this state.

(c) Certificates of deposit or other interest-bearing accounts in any bank in this state insured by the Federal Deposit Insurance Corporation.

(d) Investment certificates or shares in any state or federally chartered savings and loan association insured by the Federal Savings and Loan Insurance Corporation.

(e) Investments in first trust deeds on improved real estate, provided that the loans require monthly amortization of principal and interest and are fully amortized within 30 years or the term of the loan, whichever comes first. No loan shall be made to the cemetery authority, to the director, officer, or stockholder of a cemetery authority, or trustees of the special care funds, or to partners, relatives, agents, or employees thereof.

(f) Any investment that is lawful for endowment care funds under Sections 8751 and 8751.1.

SEC. 2. Section 8778.5 is added to the Health and Safety Code, to read:

8778.5. Each special care trust fund established pursuant to this article shall be administered in compliance with the following requirements:

(a) (1) The board of trustees shall honor a written request of revocation by the trustor within 30 days upon receipt of the written request.

(2) Except as provided in paragraph (3), the board of trustees upon revocation of a special care trust may assess a revocation fee on the earned income of the trust only, the amount of which shall not exceed 10 percent of the trust corpus, as set forth in subdivision (c) of Section 2370 of Title 16 of the California Code of Regulations.

(3) If, prior to or upon the death of the beneficiary of a revocable special care trust, the board of trustees is unable to perform the services of the special care trust fund agreement, the board of trustees shall pay the entire trust corpus and all earned income to the beneficiary or trustor, or the legal representative of either the beneficiary or trustor, without the imposition of a revocation fee.

(b) Notwithstanding subdivision (d) of Section 2370 of Title 16 of the California Code of Regulations, the board of trustees may charge an annual fee for administering a revocable special care trust fund, which may be recovered by administrative withdrawals from current trust income, but the total administrative withdrawals in any year shall not exceed 4 percent of the trust balance.

(c) Notwithstanding Section 8785, any person, partnership, or corporation who violates this section shall be subject to disciplinary action as provided in Article 6 (commencing with Section 9725) of Chapter 19 of Division 3 of the Business and Professions Code, or by a civil fine not exceeding five hundred dollars ($500), or by both, as determined by the Cemetery and Funeral Bureau and shall not be guilty of a crime.

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